**The State through Prosecutor General Punjab vs. Mubarik Ahmad Sani and another**

2024 SCP 242

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The Ahmadiyya community has faced religious hatred and discrimination since its emergence in 1889, often culminating in severe casualties. The 1953 Lahore riots and the 2010 Lahore attacks killed hundreds of Ahmadis.[1] The community was declared as non-Muslim through the Constitution (Second Amendment) Act, 1974. The *Mubarik Sani* judgments illustrate the judicial failure in protecting the Ahmadiyya community's freedom of professing and preaching their religion.

On 7 March, 2019, Mubarik Sani, an Ahmadi, distributed copies of *Tasfeer-e-Sagheer* at an Ahmadi *madrasa* in Rabwa. This book was proscribed under the Punjab Holy Qur'an (Printing and Recording) Act, 2011 ("2011 Act") for containing Qur'anic references. A First Information Report ("FIR") was filed against Sani on 6 December, 2022. On 24 June, 2023, he was charged under Sections 7 and 9 of the 2011 Act and Sections 295-B and 298-C of the Pakistan Penal Code ("PPC"). Sani was found guilty and sentenced to six months in jail. He had already spent thirteen months in jail by the time he was granted leave to appeal by the Supreme Court ("Court"). The Court acquitted him through a short order delivered on 6 February, 2024.[2] Two weeks later, the Punjab government filed a review petition, and the detailed judgment was delivered on 24 July, 2024.

The review judgment addressed three questions. Was the original judgment: i) correct in discarding all three charges; ii) mistaken in failing to quote Article 20's limiting clauses; and iii) claiming to change the legal status of the Ahmadiyya community? The first charge was dismissed because disseminating proscribed books became an offence in 2021.[3] Charging Sani retrospectively violated Article 12(1) of the Constitution of the Islamic Republic of Pakistan ("Constitution"). The second and third charges were also dismissed because the Court noted

[1] Ali Kadir, 'Parliamentary Heretization of Ahmadiyya in Pakistan' in Gladys Ganiel (ed.), Religion in Times of Crisis (Brill 2014), 139; 'Pakistan: Prosecute Ahmadi Massacre Suspects' (*Human Rights Watch*, 27 May 2012) <https://www.hrw.org/news/2012/05/27/pakistan-prosecute-ahmadi-massacre-suspects> accessed 13 October 2024.
[2] 2024 SCP 60 [17].
[3] 2024 SCP 242 [6].

that despite reference to the relevant sections of the PPC, neither the FIR nor the police report alleged "defiling of Qur'an." Consequently, a case for conviction did not stand.[4] Sani's freedom was confirmed because his thirteen-month incarceration already exceeded the maximum six-month sentence mandated by the law, even if Section 295-B was applied.[5]

Moreover, the Court modified its earlier decision by adding the limiting clause[6] of Article 20 of the Constitution,[7] clarifying that its absence did not amount to a different interpretation. The Court also reassured that the legal status of the Ahmadiyya community had not changed. *Mujib-ur-Rehman vs. Government of Pakistan* (declaring the non-Muslim status of Ahmadis per Constitution and the *Shari'a*),[8] *Zaheeruddin vs. The State* (holding that Muslim symbols are subject to copyright),[9] and *Tahir Naqash vs. The State* (affirming that the restrictions on Ahmadi activity applied to the public sphere only)[10] still hold the field. Afterwards, the Jamiat Ulema-e-Islam ("JUI") filed another review petition, requesting to remove paragraphs 7 (rejecting the application of Section 295-B of the PPC) and 42 (holding Ahmadis had the right to free practice within their homes). This plea was accepted on 22 August, 2024, despite JUI not being party to the original case.[11] The Ahmaddiya community was not made party to the review hearings while ten Islamic organisations were invited.

Amidst all this, the original SC judgment, authored by the Chief Justice ("CJP"), led to protests by thousands of Tehreek-e-Labbaik Pakistan ("TLP") supporters. The Deputy *Amir* (leader) of the TLP announced a Rs. 10 million bounty on the CJP's head.[12] Though the Deputy *Amir* was later arrested, the entire matter sets a bad example, undermining institutional writ in the face of hate and violence. It may have been these circumstances which prompted the Court to render its detailed judgment in Urdu. Writing in Urdu allows more people (including the protestors) to read the judgment in full rather than relying on the readings of those who understand English, thereby limiting the dissemination of misinformation.

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[4] Ibid [7].
[5] Ibid.
[6] Freedom to profess, practice, and propagate religion under Article 20 of the Constitution is "[s]ubject to law, public order and morality." (Emphasis added.)
[7] SCP (n 2) [43].
[8] PLD 1985 FSC 8.
[9] 1993 SCMR 1718.
[10] PLD 2022 SC 385.
[11] 2024 SCP 280 [4].
[12] News Desk, 'TLP top leader 'arrested' from Okara for issuing threats to CJP' *The Express Tribune* (Karachi, 29 July 2024) <https://tribune.com.pk/story/2483889/top-tlp-leader-booked-for-threatening-cjp-isa> accessed 30 September 2024.

After these orders, another review petition was filed. Consequently, on 10 October, 2024, the Court delivered its fourth judgment on the matter, which completely discarded the short order of 6 February and the detailed judgment of 24 July (except to the extent of granting bail to Sani), while remanding the case to the trial court and instructing the latter not to consider the discarded orders. The earlier judgments were taken down from the Court's website, and their journal citations were also removed. The 10 October judgment discussed the finality of the prophethood, a brief biography of Mirza Ghulam Ahmad, and rejected all previous rules that had been held. The Court mentioned that its judgments had been mistaken because it was not aware of the authorship of *Tafseer-e-Sagheer* — this was, in the Court's opinion, the only reason a second review was granted; the Court was clear that the law does not allow for multiple review petitions on the same matter. The Court also clarified that the 10 October order would be final and definitive in this matter as the Court would not entertain further petitions.

The Court's original judgment was a deft attempt to afford some breathing space to Ahmadis, by relying on technicalities, whilst adhering to the broader constitutional, legal, and precedential dictates. However, by removing paragraph 42 during the second review, the Court backtracked on any liberty afforded to Ahmadis through *Tahir Naqash*. Besides, little has changed as Sections 298-B and 298-C of the PPC and Article 260 of the Constitution remain untouched. In the Court's defence, a 3-member bench could not have possibly overturned earlier judgments like *Zaheerudin* rendered by larger benches. However, the case could have been entertained by the full court, although overruling established precedent is rare and would still have been difficult for the Court, given the enormous extra-judicial pressure from orthodox religious parties.

Moreover, the Court appears to have implied a hierarchy amongst the various sources of law: the Qur'an, *Hadith*, interpretative works of scholars like Imam Al-Ghazali, Constitution, statutes, and case law, thereby granting a supra-constitutional status to religious texts. From a procedural standpoint, allowing a second review is highly unusual and unheard of. One may speculate that this exception may have resulted from the severe threats the judges and their families faced from the right-wing militant parties. In conclusion, the *Mubarik Sani* judgments speak volumes about the continued overbearing position of extremists against religious minorities.